

*John Clayton, Executor of Dame
Mary Clayton, Executrix of
Sir Jasper Clayton, Appellant.*

Prudence Clayton, Respondent.

The Respondent's Case in the House of Peers.

- Anno 1660. **S**ir Jasper Clayton, being a Free-man of London, died Seized and Possessed of a considerable Real and Personal Estate, leaving the Respondent and two younger Sons, George and Andrew Orphans, his Daughter Rebecca being married in his Life-time to the late Earl of Tarmouth, and gave with her a Portion of 8000 l. And the Respondent became entituled to a Third of the Orphanage-part, by the Custom of London, and 300 l. which her Father bequeathed to her by his Will out of the Testamentary-part.
1661. The Lady Clayton, his Widow and Executrix, having proved the Will, and severely using the Respondent (then an Infant) the Court of Aldermen committed the Respondent to the Guardianship of Mr. Gregg and caused her to be called to an Account for Sir Jasper's Estate, who set forth an Imperfect Accompt thereof and after brought in two Supplimentary Accompts; All which appeared so grossly Erronious, that the said Court gave leave to put the Lady's Recognizance of 10000 l. for her true accompting in Suit against her, which was done.
1662. Applications were made to the Respondent (being then at Age,) to End the Differences and it was agreed, the Lady Clayton should give the Respondent 2000 l. as a Marriage-Portion, and in the mean time 60 l. a Year for her Maintainance, and the Respondent was to withdraw the Suits and to Execute a Release, which she complied with in respect to her Mother, but never after the Agreement could get of her Mother above 25 l. or 30 l. a Year.
1680. The Respondent's Mother caused a Writing to be tendered to her to sign, which contained divers particuler Sums of Money pretended to have been paid for the Respondent from her Father's Death to that Year, amounting to 683 l. 17 s. 11 d. The greatest part of which was never paid, and for that the Respondent refused to Allow and Sign the same, her Mother refused to pay her any thing more, tho' proved in this Cause to be a dutiful Child, and thereupon the Respondent brought her Bill in Chancery to have a Performance of the said Agreement, or an Accompt or Divident of her said Father's Estate; Whereunto her said Mother Pleaded the Statute of Limitations, as to that part of it which was for an Accompt, which Plea was Overruled.
- Feb. 6. 1681. The Cause was heard, and the said Lady Clayton offering to wave the Benefit of the aforesaid Release, it was Ordered she should Accompt (*ab origine*) for the same.
- June 14. 1684. The last part of the said Order was Reheard, and it was then Ordered that Sir Robert Legard the Master in taking the Accompt should consider the said Dame Mary's Books of Receipts and Payments and her said Accompts in the Orphans Court as Evidence, but the Respondent was at liberty to disprove them or Surcharge; and, where the said Dame Mary should demand an Allowance of several considerable Sums paid, and for which she did not produce Acquittances, the Master in that Case was to take Consideration thereof, as he should think fit, and report them especially.
- July 25. 1688. The Master certified that Dame Mary's Answer touching her Books of Accompt being all Burnt in the great Fire of London was falsified, and that he found there were in her Books of Accompt produced before him, divers Obliterations, Alterations and false Ballances, and certified then due to the Respondent for the 300 l. Legacy and Interest, and Orphanage-part without Interest 3857 l. 09 s. 10 d. And in Case several Sums of Money mentioned in the third and fourth Schedules in his Report be allowed, then 2727 l. 03 s. 2 d. only.
- July 19. 1689. The Lady Clayton's Exceptions to that Report upon Arguing the same, the Court then Ordered the Master to review his Report.
- Feb. 12. 1692. The Master upon his review Settled all the *Items* for the new Report, but before it was Signed, the Lady Clayton dyed and the Respondent revived the Suit against the Appellant.
- June 18. 1694. The Master made his Report and certified then due to the Respondent for the 300 l. Legacy and Interest, and for the Orphanage-part without Interest 2797 l. 16 s. 03 d.
- Dec. 19 & 20. 1695. The Appellants Exceptions to that Report came on to be Argued, and the eighth and twelfth Exceptions being, For that the Master had not allowed the three Accompts exhibited in the Court of Orphans as Evidence for the Appellant, and several Sums of Money amounting to 5000 l. and upwards, The Court ordered a Re-Reference to the Master to consider of the said eighth and twelfth Exceptions, and of the Appellants Books and Accompts, and to State the several Sums in the twelfth Exception mentioned, and the whole Matter touching the same and the said Books and Accompts specially to the Court.
- Jan. 21. 1695. The Master certified, he had considered of the eighth and twelfth Exceptions, and of the three Books, and three Accompts of the Lady Clayton's, and that he found divers Obliterations and Alterations and false Ballances in the said Books, as in his first Report; and that in the three Accompts there are many Entries made of Sums paid, which are not mentioned in the Books; and many Sums which were entred in the Books as received, are omitted in the three Accompts; and in the Books some Sums are twice charged to have been paid; and that in several Instances, he found very many and great Differences both as to the Sums and Persons between those mentioned in the Inventory and those mentioned in the said Books and Accompts as he formerly certified, for which Reason he then allowed the said Books and Accompts for no more than what he had certified by his former Reports: And he stated the several *Items* in the twelfth Exception in the Schedule to his Report under five several Heads or Titles, according as the same were entred in the said Books and Accounts and demanded by the Appellant.
- June 10. 1698. The Appellant's Exceptions coming on again to be argued together with the Matter of the Special Report, his Lordship declared he saw no Cause to Allow the Appellant's eighth and twelfth Exceptions, but Ordered the same to be referred back to the Master to consider thereof, and that the Lady Clayton's Books, Inventory and Accounts be not allowed as Conclusive Evidence against the Respondent; but that the Appellant do make due Proof of each particular Payment, and that the Master should forthwith make a Calculation of what was due to the Plaintiff over and above what was directed to be tried at Law, or referred back to the Master: And after the Calculation and Certificate the Respondent was at liberty to Move for an Allowance of some Ready Money for her present Subsistence, out of what should appear to be due to her. And she had thereby also Liberty reserved to her to Move after the Master's Report for Interest for her Orphanage-part.
- Dec. 23. 1699. The Appellant having Petitioned for a Rehearing, as to that part of the Order of the tenth of June, 1698, which concerns the Lady Clayton's Books and Accompts, upon hearing of both sides, his Lordship ordered the Petition to be Dismissed, And the Master having made his Calculation and certified by his Report of the sixteenth of June, 1699, 735 l. 10 s. 4 d. due to the Respondent (in all Events) over and above the Sums in Dispute, and clear from all Objections and Doubts: His Lordship then also ordered the Appellant to pay her 100 l. which he hath not yet done, but hath appealed from the said Order of the twenty third of December last, and also from the aforesaid part of the Order of the tenth of June 1698, touching the Lady Clayton's said Accompts and Books.

The Respondent hopes this most Honourable House will judge the said Orders to be Just and Regular, and not think it reasonable that such alter'd and false Books and Accompts of the Lady Clayton's as aforesaid, should conclude the Respondent, but that the Respondent after such severe Sufferings and so long a Suit, shall not be put to beg her Bread, her Father having left behind him a very plentiful Estate beyond all his Debts, and therefore she humbly Prays the said Orders may be Confirmed and the Appellant dismissed with Costs.

THO. FILMER.